

TITLE 14. OFFICE OF SPILL PREVENTION AND RESPONSE

NOTICE OF PROPOSED RULEMAKING

March 31, 2000

Notice is hereby given that the Office of Spill Prevention and Response (OSPR) within the Department of Fish and Game, proposes to amend Sections 791- 797 in Chapter 2, Subchapter 1 of the California Code of Regulations (CCR). These sections pertain to Certificates of Financial Responsibility.

PUBLIC HEARINGS

A public hearing has been scheduled at which any interested party may present statements, orally or in writing, about this proposed regulatory action. The hearing will continue until all testimony is completed. The hearing will be held as follows:

May 19, 2000

Department of Fish and Game
Office of Spill Prevention and Response
1700 "K" Street
Sacramento, California 95814
10:00 a.m.

Pre-hearing registration will be conducted just prior to each hearing. Those registered will be heard in the order of their registration. Anyone else wishing to speak at the hearing will be afforded such opportunity after those registered have been heard. The time allowed each person to present oral testimony may be limited if a substantial number of people wish to speak.

Individuals presenting oral testimony are requested, but not required, to submit a written copy of their statements. The hearing will be adjourned immediately following the completion of the oral testimony.

SUBMISSION OF WRITTEN COMMENTS

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to OSPR. The written comment period closes at 5:00 p.m. on May 19, 2000. All comments must be received by the OSPR by that time in order to be considered. Please submit written comments to:

Department of Fish and Game
Office of Spill Prevention and Response
P.O. Box 944209
Sacramento, California 94244-2090
Attention: Ms. Tracey Edwards

AUTHORITY AND REFERENCE

Government Code Section 8670.32(I) grants the Administrator the authority to develop and adopt any rules, regulations and guidelines necessary to determine evidence of financial responsibility of nontank vessel owners or operators to cover damages caused by a spill. Accordingly, these proposed regulations implement, interpret and make specific Government Code Section 8670.32(i) relating to Certificates of Financial Responsibility.

INFORMATIVE DIGEST

The Lempert-Keene-Seastrand Oil Spill Prevention and Response Act (the Act) (see Government Code Sections 8574.1 through 8670.72, and Public Resources Code Sections 8750 through 8760) created a new and comprehensive state oil spill program for marine waters. The new law greatly expanded the authority, responsibilities and duties of the Department of Fish and Game under the direction of the Administrator for oil spill response. Government Code Section 8670.6 provides authority for the establishment of OSPR which contains staff to assist the Administrator in performing the duties specified in the Act.

An urgency bill, Senate Bill 387, revised Section 8670.32(i), and required the following: it authorizes the administrator to establish a lower standard of financial responsibility for nontank barges and marine construction vessels, as defined in the statute, that is not less than the expected costs from a reasonable worst-case oil spill into marine waters.

This amendment will remedy an inequitable situation by allowing the Administrator to establish a lower standard of financial responsibility for specified types of nontank vessels that pose a reduced risk.

The definitions of “marine construction vessel” and “nontank barge” were added to Section 791.

“Nontank vessel” defines a large category of vessel, by weight and what it is not designed to carry as cargo. The definition of “Nontank vessel” was amended to clarify that the marine construction vessels and nontank barges are a subset of nontank vessels.

Where appropriate, the authority citation was amended to include the code section specifying nontank vessel certificate of financial responsibility requirements.

Section 791.7(a) specifies the application for nontank vessels and the date of origin. This subsection was amended to update the form revision date.

Sections 791.7(d) and (d)(1) specify the application process for tankers, nontank vessels, large barges and owners of oil. These subsections were amended to include a reference to marine construction vessels and nontank barges.

In Section 791.7(d)(1), existing language specifies the amount of financial ability the owner or operator must demonstrate to the Administrator. Language was added in this subsection to specify the amount, or in some instances, the calculation needed to determine the financial responsibility amount for the marine construction vessel and nontank barge.

Section 792 refers to certification requirements for tankers, nontank vessels, large barges and owners of oil. This regulation would include marine construction vessels and nontank barges in this section.

Section 794 specifies the requirements for multiple vessels/facilities certifications. This regulation would include marine construction vessels and nontank barges in this section.

Section 795 refers to evidence of financial responsibility for tankers, barges, nontank vessels, marine facilities or owners of oil. This regulation would include marine construction vessels and nontank barges in this section.

Section 797 refers to reporting and suspension for tankers, barges, nontank vessels, and marine facilities. This regulation would include marine construction vessels and nontank barges in this section.

BUSINESS IMPACTS

The OSPR finds that the proposed amendments will not have a significant adverse economic impact on California business enterprises and individuals, including the ability of California business to compete with business in other states.

COMPLIANCE WITH GOVERNMENT CODE SECTION 11342(e)

Pursuant to Government Code Section 11342(e) which pertains to a "plain English" requirement, the express terms of the proposed action are written in plain English and are available from the contact person named in this Notice. They do not use confusing concepts, technical language, or terms with meanings other than those in the dictionary. People directly or indirectly affected by these regulations will be able to understand them without special experience or training.

COMPLIANCE WITH GOVERNMENT CODE SECTIONS 8574.10 AND 8574.54

In accordance with Government Code Section 8574.10, these regulations have been submitted to the Review Subcommittee of the State Interagency Oil Spill Committee for review and comment, and in accordance with the Government Code Section 8670.54, these regulations have been submitted to the Oil Spill Technical Advisory Committee for review and comment.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: NONE.

Costs or Savings to Local Agencies or School Districts: OSPR has determined that these regulations do not result in costs or savings to local agencies or school districts which require reimbursement within the meaning of Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

Nondiscretionary Costs or Savings to Local Agencies: OSPR has determined that these regulations do not result in nondiscretionary costs or savings to local agencies.

Costs or Savings to State Agencies: OSPR has determined that these regulations do not result in costs or savings to state agencies.

Costs or Savings in Federal Funding to the State: OSPR has determined that these regulations do not result in costs or savings in federal funding to the state.

Significant adverse economic effect on small businesses, California small business enterprises and private individuals: NONE.

The businesses involved in the activities covered by these regulations are not "small businesses" as defined by the Government Code.

Significant effect on housing costs: None.

ASSESSMENT OF JOB/BUSINESS CREATION OR ELIMINATION

The OSPR has determined that this regulatory proposal will not have a significant impact on the creation or elimination of jobs or businesses or the expansion of businesses in the State of California.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(12), OSPR must determine that no alternative considered by it would be more effective in carrying out the purpose for which this action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

AVAILABILITY OF DOCUMENTS AND OSPR CONTACT PERSON

OSPR has prepared and has available the text and the initial statement of reasons for the proposed regulations. Copies of these documents are available upon request by calling the contact person identified below or by writing to:

Department of Fish and Game
Office of Spill Prevention and Response
P.O. Box 944209

In addition, the exact language of the proposed regulations may be found on the World Wide Web at the following address: <http://www.dfg.ca.gov/Ospr/regulation/cofr/index.html>

Questions regarding the proposed regulations, requests for documents, or any other questions concerning this regulatory action may be directed to Ms. Tracey Edwards at the above address or by calling (916) 327-9405.

OSPR has also prepared a rulemaking file for this regulatory action. At this point, the file consists of the initial statement of reasons, the text of the proposed regulations, and this notice. The rulemaking file will be available for public inspection and copying throughout the entire rulemaking process at the following location:

Department of Fish and Game
Office of Spill Prevention and Response
1700 "K" Street
Sacramento, California 95814

PERMANENT ADOPTION OF REGULATIONS

Following the hearing and the written comment period, OSPR may adopt the proposed regulations substantially as described in this notice. Alternatively, OSPR may adopt the regulations with modifications if the regulations as modified are sufficiently related to the original text that was made available to the public. The text of any modified regulations - with changes clearly indicated - will be made available to the public at least 15 days prior to the date on which the office adopts the modified regulations. A request for a copy of any modified regulations should be addressed to the agency contact person who is identified below. The OSPR will accept written comments on the regulations as modified for 15 days after the date on which they are made available.

SUBSTANTIAL CHANGES WILL REQUIRE NEW NOTICE AND HEARING

Modifications that are not *sufficiently related* to the original text will not be adopted without first complying anew with the notice and hearing requirements of the Administrative Procedure Act.